

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07 CV 00011**

ELENA M. DAVID, et al.,

Plaintiffs,

v.

J. STEELE ALPHIN, et al.,

Defendants.

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**DEFENDANTS' MOTION TO CONTINUE STAY OF DISCOVERY AS TO ISSUES OF
MARKET TIMING INVOLVING BANK OF AMERICA AND ITS AFFILIATED
MUTUAL FUNDS UNTIL MAY 7, 2010**

On August 17, 2009, the Court entered an Order [Dkt. # 140] staying discovery on the issues of “market timing” raised in this action for 60 days because “substantially similar discovery and resolution of issues of market timing” are involved in both this case and a pending multidistrict litigation (“MDL”) proceeding before Judge Frederick Motz involving Bank of America and its affiliated mutual funds. *See In re Mutual Funds Investment Litigation*, MDL No. 1586 (D. Md.). The Court has since extended the stay in recognition of the settlement approval process pending before the MDL court. Most recently, the Court extended the stay until April 16, 2010, the date Judge Motz had scheduled for the preliminary approval hearing in that litigation. [Dkt. # 145.]

On March 30, 2010, Judge Motz informed the parties that the preliminary approval hearing in the MDL would be rescheduled for May 7, 2010. *See* Exhibit A, Letter from Judge Motz to counsel dated March 30, 2010. In resetting the preliminary approval hearing, however,

the MDL court did not change the date for final approval of the settlement, which remains October 1, 2010.

Defendants respectfully submit that, despite this brief three-week postponement of the preliminary approval hearing, the rationale for maintaining the stay through the hearing date remains.¹ As Defendants explained in their request for that extension, the MDL court's preliminary approval hearing should provide the parties and this Court with an indication of the MDL court's views on the MDL settlement and thus will allow the Court to further assess whether discovery as to market timing is warranted in this case.

WHEREFORE, for the reasons set forth above, Defendants respectfully request that the Court extend the current stay of discovery on the market timing issues until May 7, 2010.

¹ The parties have conferred, and Plaintiffs oppose the requested extension.

Dated: April 15, 2010

Respectfully submitted,

/s/ Shannon M. Barrett
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CERTIFICATE OF SERVICE

I, Irving M. Brenner, HEREBY CERTIFY that on this 15th day of April, 2010 I electronically filed the foregoing Defendants' Defendants' Motion To Stay Discovery As To Issues Of Market Timing Involving Bank Of America And Its Affiliated Mutual Funds with the Clerk of the Court using the ECF system, which will send notification of such filing to the counsel of record listed on the service list below. In addition, I placed copies of the foregoing documents in the U.S. Mail to the counsel of record listed below.

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Dated: April 15, 2010

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